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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

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10 RIVERFRONT LANDING PHASE II
11 OWNERS' ASSOCIATION,

12 Plaintiff,

13 Case No. C08-0656RSL

14 v.
15 ASSURANCE COMPANY OF
16 AMERICA,

17 Defendant/Third-Party
18 Plaintiff,

19 ORDER AWARDING
20 ATTORNEY'S FEES

21 v.
22 WESTERN HERITAGE INSURANCE
23 COMPANY,

24 Third-Party Defendant.

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26 On February 23, 2009, the Court issued an order (Dkt. #61, the "Order") denying
as moot a motion to stay discovery filed by defendant Assurance Company of America
("defendant"). The Court granted plaintiff's request for an award of attorney's fees
pursuant to Federal Rule of Civil Procedure 37(a)(5). The Court found that the filing of
the motion was not substantially justified because defense counsel failed to satisfy the
meet and confer requirement prior to filing the motion. The Order noted that plaintiff's

1 counsel's declaration stated that he spent "at least 11.8 hours (a) coordinating the
2 scheduling of these depositions with Mr. Sparling and my staff and (b) preparing the
3 Association's response to defendant's motion." Order at p. 3 (quoting Hyde Decl. at ¶
4 18). The Order explained that plaintiff is not entitled to fees for the time counsel spent
5 scheduling the depositions because counsel would have had to schedule the depositions
6 anyway, and those efforts are not time spent "opposing the motion." Fed. R. Civ. P.
7 37(a)(5)(B).

8 At the Court's request, plaintiff's counsel has filed a declaration stating he spent at
9 least 9.2 hours researching and drafting plaintiff's response to the motion and the
10 supporting documents. Counsel's typical hourly rates vary between \$250 and \$295 per
11 hour in the matters that he bills hourly. Given that the issues presented by the motion
12 were not complex, the Court will use the lower end of the range. Therefore, the Court
13 awards \$2,300 in attorney's fees pursuant to Federal Rule of Civil Procedure 37(a)(5).
14 The Court finds that the total amount and the underlying hourly rate are reasonable.
15 Defendant must remit that amount to plaintiff's counsel within thirty days of the date of
16 this order.

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18 DATED this 9th day of March, 2009.
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22 Robert S. Lasnik
United States District Judge
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